

Appl. No. : 10/031,913  
 Filed : May 21, 2002

### REMARKS

In response to the Office Action mailed February 22, 2005, Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 18-28 and 73-81 remain pending, with Claims 18 and 73 having been amended.

In the changes made by the current amendment, deletions are shown by ~~strikethrough~~, and additions are underlined.

#### Claims 18-28 and 73-81 Are Not Rendered Obvious By The Applied Combinations

Claims 18-28 and 73-81 are presently rejected under 35 U.S.C. § 103(a) as being unpatentable over Wang/Mishra and Martin/Mishra. Applicants respectfully submit that these claims are not rendered obvious by the applied combinations on multiple grounds and request reconsideration and withdrawal of the same.

#### Martin and Mishra Are Non-Analogous Prior Art

The Martin and Mishra references are non-analogous prior art to the presently claimed invention and, therefore, cannot provide the basis for a *prima facie* case of obviousness. The presently claimed catheters are directed toward the uniform delivery of fluid throughout an anatomical region. That is, a fluid is introduced into a proximal end of the catheter, travels toward the distal end of the catheter and exits through an infusion section of the catheter at a substantially uniform rate owing to the claimed features of the catheters, such as the porous membrane and, in certain claims, the provision of multiple lumens. Similarly, the Wang catheter addresses the delivery fluid to the body (bodily passages) at a fairly uniform flow rate.

In contrast, the devices of both Martin and Mishra are configured for use in dialysis procedures. In fact, the Mishra device is not referred to as a catheter, but is referred to as a probe. In each of these devices, fluid is introduced into one lumen of the device and fluid is returned through another lumen in the device. That is, fluid is both delivered and returned through the devices.

The Examiner is not viewing the prior art in the same perspective as an inventor *at the time of the invention*, but is selecting prior art references using the Applicants' own disclosure as a guide. One of skill in the art seeking to develop an improved fluid delivery catheter to deliver

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fluid at a substantially uniform flow rate would not look to dialysis prior art. Accordingly, Applicants submit that the applied combinations are improper and, thus, no *prima facie* case of obviousness has been established.

#### The Combination of Wang and Mishra Is Improper

Wang discloses a fluid delivery catheter which utilizes an inner tube having exit holes of a specific spacing relative to the exit holes of an outer tube of the catheter. In order to achieve a uniform flow rate, the exits holes are spaced such that the average flow distance between the exit holes of the inner tube and the exit holes of the outer tube is less in the distal portion of the catheter than in the proximal portion. As a result, fluid flows more readily from the distal portion of the catheter despite the pressure loss that occurs due to the more proximal exit holes. Thus, the inner and outer tubes operate *in combination* to achieve the desired effect.

Yet, the Examiner takes the position that it would be obvious to modify the Wang catheter to include the porous membrane and ribs of Mishra in order to arrive at the claimed invention. As noted above, the inner and outer tubes of the Wang device work in concert to achieve a uniform flow rate. Applicant respectfully submits that the combination of Wang and Mishra is contrary to the disclosure of the Wang reference and would change the principle of operation of the Wang reference. Thus, the combination is *improper* and the rejections based on this combination cannot be maintained. See M.P.E.P. § 2143.01.

#### Amended Claims 18-28 and 73-81 Are Allowable Over Martin/Mishra

Despite the Martin and Mishra devices being non-analogous art to the present invention, Applicants nonetheless have amended Claims 18 and 73 to further distinguish this combination. Accordingly, for at least the reasons provided below, reconsideration and withdrawal of the present rejection is respectfully requested.

Claim 18 has been amended to recite a catheter including, among other limitations, an elongated support and a porous membrane wrapped around the support to form at least one lumen. The support and the porous membrane are constructed as separate members and from different materials. The catheter is configured such that fluid introduced into the proximal end of the catheter *enters the open proximal end of the at least one lumen, flows toward a distal end of the catheter and exits the catheter through the porous membrane at a rate determined by a rate of*

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diffusion of the fluid through the porous membrane. That is, Claim 18 has been amended to clarify that the catheter is configured to deliver fluid to an anatomical region. Claim 73 has been amended to include similar limitations, except that the catheter of Claim 73 also recites that at least three lumens are defined between the support and the porous membrane such that fluid introduced into the proximal end of the catheter is divided among the at least three lumens.

In contrast, each of the Martin and Mishra references are directed toward a dialysis device. In each of these references, fluid flows in both the proximal-to-distal direction and the distal-to-proximal direction. That is, fluid flows both in and out of the devices. *See Column 4, lines 64-66 of Martin and the flow arrows in Figure 4 of Mishra.*

Applicants respectfully submit that the combination of Martin/Mishra does not teach all of the claimed limitations of independent Claims 18 and 73. Thus, a *prima facie* case of obviousness has not been established and the rejection based on this combination cannot be maintained. The dependent claims are allowable, not only because they depend from an allowable claim, but upon their own merit as well.

#### CONCLUSION

For at least the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Curtiss C. Dosier at (949) 721-7613 (direct line), to resolve such issue promptly.

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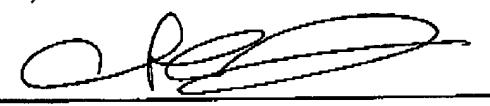
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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 22, 2005

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